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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 280-2

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on December 17, 2007

Signature /jjb/

Typed or printed name James J. Bitetto

Application Number	Filed
10/804,529	March 19, 2004
First Named Inventor	
Crosbie	
Art Unit	**Examiner**
3617	Mark Le

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☑ attorney or agent of record. Registration number 40,513
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

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December 17, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

PATENT
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Crosbie et al. **Examiner:** Mark Le

Serial No: 10/804,529 **Group:** Art Unit 3617

Filed: March 19, 2004 **Docket:** 280-2

For: OVER-WAY PLATFORMS FOR TRANSPORTATION SYSTEMS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Statement in Support of Pre-Appeal Brief Request for Review

This paper is being filed in support of Applicants' Pre-Appeal Brief Request for Review. A Notice of Appeal has been filed herewith in response to the Final Office Action mailed on August 15, 2007. Applicants respectfully contend that the claim rejections set forth in the Final Office Action are clearly erroneous as a matter of fact and law for at least those reasons set forth in the After Final Amendment filed on 15 October 2007, which is incorporated herein by reference. Rather than reiterate those reasons in full, the following Statement will focus on the impropriety of the Examiner's obviousness rejection of independent claim 15 based on the combination of Nijenhuis and Coslovi in view of Coath.

As explained hereafter, the obviousness rejection of claim 15 is based on wholly erroneous characterizations, assumptions and misinterpretations of the teachings of the cited references as applied to many of the features of claim 15, which is cited hereafter for ease of reference.

Claim 15 recites a *portable over-way platform structure for a railway system, comprising:*

> *a portable platform configured to bridge a first track to permit pedestrian traffic to cross over the first track to and from a permanent platform, the portable platform having an uppermost surface maintained at a same level relative to the permanent platform, the portable platform being self-supporting and independent from the permanent platform for maintaining the same level;*
>
> *a safety fence coupled to the uppermost surface of the portable platform and arranged transversely to a direction of the length of the first track for pedestrian safety;*

a trolley coupled to the portable platform, which supports a wheel system;

a positioning system coupled between the trolley and the portable platform to provide vertical and horizontal adjustment of the portable platform relative to the wheel system to maintain the same level; and

wheels included in the wheel system to engage the first track to permit the portable platform structure to be moved along the first track to permit placement of the platform structure.

In formulating the rejection of claim 15, the Examiner relies on Nijenhuis as teaching a *portable platform having an uppermost surface maintained at a same level relative to the permanent platform, the portable platform being self-supporting and independent from the permanent platform for maintaining the same level,* but the Examiner's reliance on Nijenhuis in this regard is clearly misplaced.

Nijenhuis teaches (in FIG. 2 and Col. 6, lines 19~59) a railway wagon 6 with a substructure 13 bearing wheels 6 and a superstructure 14 ("portable platform") having a loading floor 15. The portable platform 14 is supported on the substructure 13 by a resilient suspension system including pneumatic spring systems 17 that operates to move the platform 14 upwards and downwards so that the platform can be lowered onto supports 11 that protrude from the sidewalls of the permanent platforms 4 and 5 on either side of a section of track 3. The platform 14 includes stop surfaces 18, which are used to support the platform 14 on supports 11.

Nijenhuis specifically teaches that the supports 11 on the sidewalls of the permanent platforms 4, 5 are needed so that the loading floor 15 of the platform 14 will remain at a fixed and predetermined height during loading and unloading (see Abstract). In particular, Nijenhuis teaches the use of the support 11 as improvements over conventional schemes for the purpose of supporting the platform 14 and ensure that the loading floor 15 is situated at a predetermined, fixed height during loading and unloading by preventing the platform 14 from springing in and out with respect to the substructure 13 during loading and unloading. (see, Col. 1, lines 29-65; Col. 6, lines 44-53, and Col. 8, lines 1-10).

Although Nijenhuis arguably discloses a portable platform 14 having an uppermost surface 15 that can be maintained at a same level relative to a permanent platform 4, 5, Nijenhuis clearly does not teach that the *portable platform is self-supporting and independent from the permanent platform for maintaining the same level.*

On page 4 of the Final Action, the Examiner contends that:

> " ... the portable platform of Nijenhuis is inherently capable of self-supporting and independent from a permanent platform that does not have support elements 11 attached to the sides of the permanent platform. On the other hand, it is noted that support elements 11 of Nijenhuis are provided for added enhancement of vertical stability of the platform during loading of a heavy load container onto the portable platform. However, it certainly would have been obvious to one skilled in the art to choose not to provide such support element 11 at a perform platforms for operating with light loads, such that the use of such support elements 11 is not critical for maintaining vertical stability of the portable platforms during loading of a light load."

The Examiner's findings in this regard are fundamentally flawed on various levels. First of all, the Examiner does not address the specific claim language of claim 15 that *the portable platform is self-supporting and independent from the permanent platform for maintaining the same level*. Notwithstanding that the platform 14 in Nijenhuis may, generally speaking, be self-supporting and independent of the permanent platform, the Examiner fails to address or otherwise explain how, in the absence of the supports 11, the platform 14 in Nijenhuis is capable, of being self supporting and independent of the permanent platform for purposes of maintaining the platform surface at the same level of the permanent platform as the load on the platform varies during loading/unloading. Indeed, notwithstanding that the portable platform of Nijenhuis may be self supporting and independent of the permanent platform, it does not necessarily or logically follow that the portable platform 14 is self supporting and independent to maintain the same level without the support 11 structures.

In this regard, the Examiner's "inherency" theory is not supported by factually and legally sound reasoning, and is actually contrary to the clear teachings of Nijenhuis that the supports 11 are used to ensure *that the level of the platform floor will remain constant with regard to the surfaces of the permanent platform and not vary due to the springing action of the suspension system as the weight on the top of the platform varies upon loading/unloading cargo*. Indeed, there is no reasonable basis for the Examiner's finding that support elements 11 of Nijenhuis are provided for added enhancement of vertical stability of the platform during loading of a heavy load container onto the portable platform. Again, Nijenhuis teaches that the the supports 11 are not used solely to support heavy loads, but rather prevent springing action upon loading and unloading of cargo. Without supports, the portable platform of Nijenhuis would not be able to maintain the same level but for the platform resting on the supports 11.

Moreover, the Examiner's finding that "use of such support elements 11 is not critical for maintaining vertical stability of the portable platforms during loading of a light load" is nothing more than a bald, conclusory assertion that is not supported by the teachings of Nijenhuis. Again, this finding is undermined by the faet that Nijenhuis teaches the use of the supports 11 for the purpose of presenting springing action of the platform 14. The Examiner's findings that the supports 11 are not critical are further undermined by the fact that the supports 11 are also used maintaining the level of the surface 15 of the platform 14 at the same level of the permanent platforms 4 and 5 on either side when the permanent platform surfaces are not level with each other, i.e., by resting the platform 14 on supports 11, it is ensured that the surface edges of the platform are even with the surfaces of the permanent platforms (see Col. 6, lines 49-58).

Furthermore, in formulating the rejection of claim 15, the Examiner erroneously relies on Nijenhuis as modified by Coath as teaching a *a positioning system coupled between the trolley and the portable platform to provide vertical and horizontal adjustment of the portable platform relative to the wheel system to maintain the same level.* The Examiner essentially acknowledges (on page 5 of the Final Action) that Nijenhuis' spring system 17 allows for vertical adjustment but not horizontal adjustment , but relies on Coath as curing the deficiencies of Nijenhuis in this regard.

Coath discloses the use of a "pivot mechanism" for railway vehicles to enable the wheel axles of a railway vehicle to turn independently of the body of the vehicle upon a pivot perpendicular to the center of the length of the wheel axle. Coath's "pivot mechanism" for railway vehicles allows the axle to turn independently of the body of the vehicle while the vehicle travels around curved tracks and thereby reduce the frictional wear upon the rails by the wheels.

The Examiner's reliance on Coath as disclosing a "pivot" mechanism that can be used in the system of Nijenhuis to provide a positioning system horizontal adjustment of the portable platform relative to the wheel system to maintain the same level is *wholly unclear*, both factually and logically, and seemingly based on a strained, unsound attempt to fit irrelevant teachings of the prior art to meet the claimed features. This teaching of a pivot" mechanism is clearly irrelevant and starkly different from the claimed positioning system that enables horizontal displacement of the platform relative to the wheels. At most, Coath teaches rotational displacement of the wheel system relative to a vehicle body.

Even assuming, *arguendo*, that Coath's pivoting mechanism can somehow be viewed as enabling horizontal motion of a platform relative to the wheels, it is fundamentally clear that such pivoting mechanism in Coath is designed to occur automatically and freely during motion of the railway vehicle as a result of inertia forces created while the railway vehicle is traveling around curved path. In contrast, the claimed inventions are directed to stationary platforms for pedestrian traffic. Accordingly, even if the "pivot mechanism" of Coath was used in the Nijenhuis system, any such horizontal adjustment of the platform 14 due to "pivoting" from motion forces would not occur because the Nijenhuis system would be stationary. Moreover, even if the wheel system of Nijenhuis could be made to pivot (via some automation) relative to the platform while in stationary position, it is not clear how such pivoting would not result in horizontal displacement of the platform to provide an adjustment *horizontal adjustment of the portable platform.*

In view of the above, it is glaringly apparent that the the cited combination of Nijenhuis and Coath utterly fails to teach or suggest, for example, a positioning system coupled between the trolley and the portable platform to provide vertical and horizontal adjustment of the portable platform relative to the wheel system to maintain the same level, as claimed in claim 15.

In view of at least the above deficiencies of the cited art, it is submitted that no *prima facie* case of obviousness has been, or can be, established against claim 15, at the very least. As such, it is respeetfully submitted that the obviousness rejections be withdrawn..

Respectfully submitted,

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